

**Letter of Findings: 09-0697
Indiana Individual Income Tax
For the Years 2007 and 2008**

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ISSUES

I. Indiana Individual Income Tax – Imposition.

Authority: IC § 6-3-2-1; IC § 6-3-1-12; IC § 6-8.1-5-1; [45 IAC 3.1-1-22](#); Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289 (Ind. Tax Ct. 2007); State Election Bd. v. Bayh, 521 N.E.2d 1313 (Ind. 1988).

Taxpayer protests the assessment of Indiana income tax on income earned during claimed non-residency.

II. Tax Administration – Penalty.

Authority: IC § 6-8.1-10-2.1; [45 IAC 15-11-2](#).

Taxpayer protests the imposition of the ten percent negligence penalty.

STATEMENT OF FACTS

The Indiana Department of Revenue ("Department") assessed tax on income Taxpayer earned between January 1, 2007, and August 10, 2008, on the premise that Taxpayer was an Indiana resident during that period. Taxpayer protests that he was not a resident of Indiana during that time period. A hearing was held on Taxpayer's protest and this Letter of Findings ensues. Additional facts will be provided as necessary.

I. Indiana Individual Income Tax – Imposition.

DISCUSSION

The Department assessed additional income tax, interest, and penalty on income Taxpayer earned between January 1, 2007, and August 10, 2008. The Department determined that Taxpayer was a resident of Indiana during that time period and therefore Taxpayer's income was taxable to Indiana during that interim. Taxpayer protests that he was a resident of Tennessee during that time.

All tax assessments are prima facie evidence that the Department's claim for the unpaid tax is valid; the taxpayer bears the burden of proving that any assessment is incorrect. IC § 6-8.1-5-1(c); Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007).

IC § 6-3-2-1(a) states:

Each taxable year, a tax at the rate of three and four-tenths percent (3.4 [percent]) of adjusted gross income is imposed upon the adjusted gross income of every resident person, and on that part of the adjusted gross income derived from sources within Indiana of every nonresident person.

IC § 6-3-1-12 states:

The term "resident" includes (a) any individual who was domiciled in this state during the taxable year, or (b) any individual who maintains a permanent place of residence in this state and spends more than one hundred eighty-three (183) days of the taxable year within this state, or (c) any estate of a deceased person defined in (a) or (b), or (d) any trust which has a situs within this state.

[45 IAC 3.1-1-22](#) defines "domicile" and includes that "a person has only one domicile at a given time even though that person maintains more than one residence at that time." The cited regulation also notes:

Once a domicile has been established, it remains until the conditions necessary for a change of domicile occur.

In order to establish a new domicile, the person must be physically present at a place, and must have the simultaneous intent of establishing a home at that place. It is not necessary that the person intend to remain there until death; however, if the person, at the time of moving to the new location, has definite plans to leave that new location, then no new domicile has been established.

The determination of a person's intent in relocating is necessarily a subjective determination. There is no one set of standards that will accurately indicate the person's intent in every relocation. The determination must be made on the facts present in each individual case.

(Emphasis added).

The Indiana Supreme Court considered the issue of the meaning of "domicile" in State Election Bd. v. Bayh, 521 N.E.2d 1313 (Ind. 1988). In that case, Mr. Bayh desired to run for governor of the state. Pursuant to public discussion concerning whether Mr. Bayh met the residency requirements for governor, Mr. Bayh sought a declaratory judgment determining whether he met the residency requirement. The Indiana Supreme Court affirmed the trial court's decision that the standard for residency was whether or not Mr. Bayh had an Indiana domicile. It also affirmed that Mr. Bayh was domiciled in Indiana.

Domicile in Indiana is defined as "the place where a person has his true, fixed, permanent home and principal

establishment, and to which place he has, whenever he is absent, the intention of returning." Id. at 1317. Domicile is not determined by the location of the person's body. Once established, a person's domicile is presumed to continue until the person's actions provide adequate evidence that, along with moving to another jurisdiction, the person intends to establish a domicile in the new residence. Whether or not the person has successfully established a new domicile is a question of fact to be determined by the trier of fact. Id. at 1318. Some of the facts considered were that Mr. Bayh paid in-state tuition at Indiana University, out-of-state tuition at the University of Virginia law school and voted in the elections in Vigo County, Indiana. He also registered for the draft from Indiana. The Supreme Court considered these acts adequate evidence to prove that Mr. Bayh intended to return to Indiana and retained his Indiana domicile even though he had lived outside the state for several years.

Taxpayer states that in 2005 he lost his job with an Indiana employer. He pursued some opportunities in real estate in Indiana but in late 2006 moved to Tennessee to pursue opportunities there. Taxpayer did not maintain a personal residence in Indiana as he rented out his property while he was living in Tennessee. Taxpayer continued to use his parents' post office box as a mailing address for his former employer as he continued to receive payments from his former employer under its contract with his workplace union. Also, he expected to be recalled to work by his former Indiana employer and did not want the hassle of continuing to change his address. Taxpayer provided an affidavit from the local postmaster that the post office box belonged to Taxpayer's parents. Taxpayer continued to own rental property in Indiana and made several trips to Indiana during the period in question to check on this property.

Taxpayer provided documentation that shows that he purchased property in Tennessee during 2007 and built a new residence there which he moved into during 2007. Taxpayer also started a business in Tennessee and provided his 2007 Tennessee Franchise, Excise Tax return. Taxpayer also provided copies of his 2007 1040 individual federal income tax return as well as the 2007 1120 federal return for the business. Taxpayer used a Tennessee address on the returns. Taxpayer also filed a 2007 part-time Indiana return that reflected wages from his former Indiana employer, the loss from operating rental properties that were in Indiana, and the gain from the sale of two rental properties. Taxpayer provided 2007 bills from a Tennessee utility company that showed Taxpayer address as a local Tennessee Post Office Box address. Taxpayer also maintained an account at a bank in Tennessee.

Taxpayer did not register to vote in Tennessee. Nor did Taxpayer acquire a Tennessee driver's license, preferring to maintain his Indiana license since he anticipated moving back to Indiana upon a recall to his Indiana employer which occurred in August of 2008. Taxpayer moved back to Indiana in August 2008. Even though Taxpayer is back in Indiana, Taxpayer states that he continues to maintain a residence in Tennessee and operate a weekend salvage business there.

IC § 6-3-2-1(a) imposes Indiana income tax on residents of Indiana. IC § 6-3-1-12 states that the term "resident" includes any individual who was domiciled in this state during the taxable year. Clearly, prior to 2007, Taxpayer was domiciled in Indiana. Once established, a person's domicile is presumed to continue until the person's actions provide adequate evidence that, along with moving to another jurisdiction, the person intends to establish a domicile in the new residence. Whether or not the person has successfully established a new domicile is a question of fact to be determined by the trier of fact. Bayh, 521 N.E.2d at 1317. In this case, on balance there is adequate evidence to prove that Taxpayer intended to return to Indiana and retained his Indiana domicile even though he clearly had lived outside the state in 2007 and part of 2008.

FINDING

Taxpayer's protest is respectfully denied.

II. Tax Administration – Penalty.

DISCUSSION

Taxpayer also protests the imposition of the negligence penalty.

Pursuant to IC § 6-8.1-10-2.1, the Department may assess a ten (10) percent negligence penalty if the taxpayer:

- (1) fails to file a tax return;
- (2) fails to pay the full amount of tax shown on the tax return;
- (3) fails to remit in a timely manner the tax held in trust for Indiana (e.g., a sales tax); or
- (4) fails to pay a tax deficiency determined by the Department to be owed by a taxpayer.

[45 IAC 15-11-2](#)(b) further states:

"Negligence" on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

The Department may waive a negligence penalty as provided in [45 IAC 15-11-2](#)(c), in part, as follows:

The department shall waive the negligence penalty imposed under [IC 6-8.1-10-1](#) if the taxpayer affirmatively

establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section. Factors which may be considered in determining reasonable cause include, but are not limited to:

- (1) the nature of the tax involved;
- (2) judicial precedents set by Indiana courts;
- (3) judicial precedents established in jurisdictions outside Indiana;
- (4) published department instructions, information bulletins, letters of findings, rulings, letters of advice, etc.;
- (5) previous audits or letters of findings concerning the issue and taxpayer involved in the penalty assessment.

Reasonable cause is a fact sensitive question and thus will be dealt with according to the particular facts and circumstances of each case.

Taxpayer has provided sufficient documentation establishing that his failure to file his 2007 and 2008 full-time resident returns were due to reasonable cause.

FINDING

Taxpayer's protest on the imposition of the negligence penalty is sustained.

CONCLUSION

For the reasons discussed above, Taxpayer's protest on the imposition of income tax is respectfully denied. However, Taxpayer's protest on the negligence penalty is sustained.

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